Speech By

# Hon. Shannon Fentiman

## MEMBER FOR WATERFORD

Record of Proceedings, 3 December 2015

## DOMESTIC AND FAMILY VIOLENCE PROTECTION AND ANOTHER ACT AMENDMENT BILL

### Second Reading

**Hon. SM FENTIMAN** (Waterford—ALP) (Minister for Communities, Women and Youth, Minister for Child Safety and Minister for Multicultural Affairs) (4.31 pm): I move—

That the bill be now read a second time.

I introduced the Domestic and Family Violence Protection and Another Act Amendment Bill 2015 into parliament on 29 October 2015. The bill was referred to the Communities, Disability Services and Domestic and Family Violence Prevention Committee and the committee tabled its report on the bill on 26 November 2015. I thank all members of the committee for their examination of the bill. I table a copy of the Queensland government's response to the committee's report.

*Tabled paper:* Communities, Disability Services and Domestic and Family Violence Prevention Committee: Report No. 10, 55th Parliament—Domestic and Family Violence Protection and Another Act Amendment Bill 2015, government response [1847].

The committee received 13 submissions on the bill, including submissions from the Queensland Domestic Violence Network, the Women's Legal Service, the Aboriginal and Torres Strait Islander Legal Service (Queensland) Ltd, the Cairns Collective Impact on Domestic and Family Violence, the Australian Law Reform Commission, Soroptimist International Brisbane Incorporated, the Queensland Council of Unions and the Immigrant Women's Support Service. I thank everyone who made a submission on this bill for taking the time to do so.

The committee made five recommendations and I will address each of the committee's recommendations in turn. The committee's first recommendation is that the bill be passed and I thank the committee for that recommendation. The second recommendation relates to clause 4 of the bill. Clause 4 inserts a new principle into the act that, to the extent it is appropriate and practicable, the views and wishes of people who fear or experience domestic violence should be sought before a decision affecting them is made under the act. The committee recommended that the bill be amended to omit clause 4 and that my department reconsider how to best ensure that the victims of domestic and family violence are afforded the opportunity to express their views and wishes as part of its wider review of the Domestic and Family Violence Protection Act 2012 and implementation of the task force recommendations. The government does not accept this recommendation.

The principles set out the key priorities for the administration of the act and the government believes that a principle to hear the views and wishes of victims sits well with the current principles, which include the safety of victims being paramount, victims should be treated with respect, perpetrators should be held to account, the person most in need of protection should be identified and special attention should be paid to those most vulnerable. The inclusion of this additional principle in the bill recognises the rights of victims to be heard and legislatively reflects the importance of victims having an opportunity to have their voices heard throughout all stages of the process. The new principle is

intended to be a first step in addressing the concerns identified by the Special Taskforce on Domestic and Family Violence that victims often feel their voices are not heard, including during court proceedings.

Recommendation 129 of the task force report recommended the introduction of victim impact statements in domestic violence proceedings. The government accepted recommendation 129 and noted that the government is committed to ensuring victims' voices are heard in all domestic violence related legal proceedings and ways to achieve the intent of that recommendation would be considered as part of the review of the act. During the development of the bill, stakeholders raised with my department concerns about the use of victim impact statements in civil proceedings on an application for a protection order. We listened to them and that is why the bill does not include provisions for victim impact statements. During the committee process for this bill, stakeholders again raised concerns about the use of victim impact statements in proceedings on an application for a protection order and it has been raised by the opposition that the reference to recommendation 129 in the explanatory notes may at least give rise to the perception that a statement to court is the intention.

Let me be clear: this bill does not introduce victim impact statements in civil proceedings. There is further work to be done on this matter and it has been deferred for consideration as part of the broader review of the Domestic and Family Violence Protection Act, which is also underway.

Giving victims of domestic violence an opportunity to have their voices heard is a significant issue that should be given recognition as a principle for administering the Domestic and Family Violence Protection Act 2012. The principle was developed and amended in consultation with stakeholders, including service providers from the domestic violence sector and the courts. For example, the inclusion of the words 'to the extent it is appropriate and practicable' reflects that the inclusion of the principle is not intended to result in unnecessary delays or impose unreasonable requirements on the courts to change existing processes. After receiving the committee's report, officers from my department again contacted key domestic violence sector stakeholders. The stakeholders contacted indicated that they were supportive of the principle remaining in the bill. Some concerns were raised during the committee process that the principle may be interpreted by magistrates as imposing an obligation to question the victim about their views and wishes in court. The principle does not require magistrates to question victims in open court and there will continue to be a range of opportunities for victims to be heard during proceedings. The principle is a reminder to decision-makers that victims should be given the opportunity to express their views and wishes to the extent it is appropriate and practicable.

The government will continue to consider how best to implement the intent of recommendation 129 of the task force report as part of the overarching review of the act, as well as through the implementation of the government's response to the task force recommendations. Through this review, we will continue to seek further input from stakeholders to ensure the intent of recommendation 129 is fulfilled.

**Madam DEPUTY SPEAKER** (Miss Barton): Order! I remind the member for Chatsworth that, in order to interject, he needs to be in his own seat.

**Ms FENTIMAN:** The third recommendation of the committee report is for the Queensland government to work with the Magistrates Court to establish procedures and guidelines to ensure that decisions about which courts should hear cross-applications are made in a timely manner and in accordance with the principles in section 4 of the act. The government notes this recommendation. It is in everybody's interests that orders are managed in a timely manner, particularly given one of the driving reasons behind this amendment is to avoid the deliberate use of cross-applications to frustrate the court and other parties. I am advised that, as part of current practice, court staff routinely perform searches of court systems to determine whether or not there is a cross-application.

Section 10 of the application form used to apply for a domestic violence protection order contains a question to applicants to provide details of other orders or applications, including whether there is a current or past Queensland domestic violence order. To consolidate consistent practice and ensure the earliest identification of cross-applications can be made, new and updated procedures for Magistrates Court staff are being developed to mandate these searches and improve processes. Consideration is also being given to a practice direction to be issued by the Chief Magistrate, setting out a framework for the hearing of cross-applications and providing submissions about the transfer of proceedings.

The committee's fourth recommendation is that the Queensland government work with the magistrates courts to ensure that applicants for domestic violence orders are given the opportunity to provide details about why a matter should be heard in a particular court. The government notes this recommendation. Currently, a magistrate making a decision to adjourn a matter to another court location will generally hear from the parties before making such a decision. As I mentioned previously, consideration is being given to a new practice direction to be issued by the Chief Magistrate setting out

a framework for the hearing of cross-applications and how submissions from the parties can be made about the transfer of proceedings.

The committee's final recommendation is that I clarify a number of matters about body worn cameras during the second reading debate. Let me address the matters that the committee has asked for clarification about. The committee asked me to outline what training police officers receive in relation to the use of body worn cameras at domestic and family violence incidents.

Body worn cameras are considered to be an evidence gathering tool that may enhance the police response to and investigation of domestic and family violence and other incidents by recording relevant information. The appropriate circumstances for the use of body worn cameras are outlined in the police *Digital electronic recording of evidence and interviews manual*.

Police receive extensive training in relation to investigating domestic and family violence as part of their initial training. Additional training is provided through online learning products. This is supported by a comprehensive Queensland Police Service policy in relation to domestic violence as contained in chapter 9 of the QPS *Operational procedures manual*. This chapter outlines the policy and procedures for managing domestic violence incidents and providing assistance to members of the community who may be affected by domestic violence.

The Queensland Police Service has an extensive network of domestic and family violence coordinators throughout the state. These are specialist police officers available in each police district to provide direction, guidance and advice to police officers on domestic and family violence issues.

The committee has also asked me to outline what measures are in place to ensure that police officers are aware of and comply with the Queensland Police Service's policy on the use of body worn cameras and the handling and storage of body worn camera recordings. The Queensland Police Service has advised me that the Queensland Police Service policy about body worn cameras was developed to support the rollout of service issued body worn cameras. That policy is located in the *Digital electronic recording of evidence and interviews manual*. Police officers were advised of this policy through a statewide email dated 16 October 2015.

Police officers are under a statutory obligation to comply with directions and orders given to them by the commissioner under section 4.9 of the Police Service Administration Act 1990. The commissioner requires all members of the Police Service to be familiar with the contents of the manual and to comply with the contents of the manual so that their duties are discharged lawfully, ethically and efficiently.

The committee's recommendation also asked me to outline what procedures are in place to deal with noncompliance with the policy. A failure by police to comply with the Queensland Police Service policy may make that officer liable to disciplinary action under section 7.4 of the Police Service Administration Act 1990. The disciplinary sanctions that a police officer may face through the police discipline process range from cautioning or reprimand to dismissal from the service. This range of disciplinary sanctions allows the severity of the disciplinary sanction to be commensurate and reflective of the seriousness of each individual matter.

I will now turn to provide a general overview of the amendments that the bill contains. This bill responds to three specific recommendations and legislative amendments in the *Not now, not ever* report of the Special Taskforce on Domestic and Family Violence in Queensland. Recommendation 99 of the task force report recommended that the Domestic and Family Violence Protection Act 2012 be amended to require the court to consider concurrent cross-applications at the same time and a latter application and related cross-application or order.

The bill implements this recommendation by requiring a court, if it is aware of cross-applications, to hear the cross-applications together and determine the person most in need of protection. A court will have discretion to hear cross-applications separately if the court decides it is necessary to deal with applications separately in the interests of safety, protection or wellbeing of an aggrieved person.

This amendment will help to improve the safety of victims by setting a clear expectation that in the majority of cases all relevant issues and circumstances surrounding a particular domestic or family violence case are considered by a court at the same time. Courts will also be required to identify the person most in need of protection in accordance with existing principles of the act.

The task force report also recommended legislative amendments to require a court, when making a domestic violence order, to consider whether an order excluding the perpetrator from the home should be made, having regard to the wishes of the victim. This was contained in recommendation 117 and is commonly referred to as an ouster condition.

The bill implements this recommendation by requiring the court to consider the imposition of an ouster condition in relation to each application for a temporary or final domestic violence order. Although the court is required to have regard to the wishes of the victim, whether or not an ouster condition is

made will ultimately remain a decision that is made by the court. As with all decisions made under the act, the safety, protection and wellbeing of the victim and any children will continue to be the paramount consideration for the court. While it will not be mandatory for a court to consider the imposition of an ouster condition in relation to variation applications, the court will retain discretion to be able to impose a condition if it is necessary.

It is important to note that the bill does not require victims to express their views or wishes about the making of an ouster condition. The bill includes a provision stating that no adverse inference can be drawn if a victim chooses not to make their views known.

The bill includes an amendment that relates to recommendation 129 of the task force report. That recommendation sought the introduction of victim impact statements in domestic violence proceedings and mandatory consideration of these statements by courts in applications for protection orders.

As I mentioned earlier, the amendment in this bill does not introduce victim impact statements. Rather, it includes a new principle that, to the extent it is appropriate and practicable, the views and wishes of people who fear or experience domestic violence should be sought before a decision affecting them is made under the act.

Currently, when a court is deciding whether a protection order is necessary or desirable to protect the aggrieved from domestic violence, the court must consider the principles in section 4 of the act. The inclusion of the additional principle recognises the rights of victims to be treated with respect and dignity and the importance of ensuring an opportunity for victims to provide information about their views and wishes if they wish to do so.

There is no mandatory requirement for a victim to provide information to a court and it will continue to be a matter for each aggrieved person as to whether they choose to provide any information based on their personal circumstances. The inclusion of the principle is a reminder to decision-makers that, if victims wish to be heard, they should be given appropriate opportunities to do so and their difficult and traumatic experiences of domestic and family violence should be treated with care and respect.

Although a new principle is being included through the bill, the paramount principle of the act is the safety, protection and wellbeing of people who fear or experience domestic violence, including their children. This will continue to be the overriding consideration for every decision made and action taken by a person involved in the administration of the act.

The bill also responds to recommendation 131 of the task force report that the Queensland Police Service develop and implement a strategy for increasing criminal prosecution of perpetrators of domestic and family violence through enhanced investigative and evidence-gathering methodologies. The government accepted this recommendation and has funded the rollout of 300 body worn cameras for police officers at the Gold Coast. This new technology will help our front-line police to assist in gathering evidence in domestic and family violence situations as well as other priority policing functions.

The amendments to the Police Powers and Responsibilities Act 2000 in the bill provide certainty that the use of body worn cameras by police officers in the performance of their duties is lawful. Police officers using body worn cameras currently face the remote risk that they may unintentionally record private conversations. This provision will remove that concern by providing police officers with an exemption to the general prohibition on recording private conversations under the Invasion of Privacy Act 1971.

This provision will operate to ensure that the use of body worn cameras will be considered to be lawful even if their use is inadvertent, unexpected or otherwise incidental to the performance of the officer's duty. This provision only applies to body worn cameras which are defined to mean a device that is designed to record images or images and sounds and which is worn on clothing or otherwise secured on a person.

The bill also makes two minor and technical amendments. The first of these will allow victims and police to appeal a court's decision not to make a temporary protection order. The second will allow temporary protection orders to be made to protect a person who is seeking to be added to a protection order, such as a child or a new partner. These amendments were recommended by the task force report.

Again, I would like to extend my thanks to the Communities, Disability Services and Domestic and Family Violence Prevention Committee for its examination of the bill. I would also like to thank the research staff of the committee for their hard work and dedication in assisting the committee in their consideration of the bill.

This bill continues this government's significant reform efforts that have already seen the passage of the Criminal Law (Domestic Violence) Amendment Act 2015. This bill delivered immediate changes to our courts and criminal justice proceedings including increasing penalties for breaches of domestic

violence orders, better recording of convictions and allowing for special witness protection. In addition, the Coroners (Domestic and Family Violence Death Review and Advisory Board) Amendment Act 2015 has also been passed and provides for the establishment of a death review and advisory board so that systems can be improved to prevent further deaths.

The Attorney-General and Minister for Justice has also introduced the Criminal Law (Domestic Violence) Amendment Bill (No. 2) 2015 this week, which proposes a new offence of strangulation and the introduction of amendments to the Penalties and Sentences Act 1992 to make domestic violence an aggravating factor on sentence. We know that non-fatal strangulation is a serious predictive risk factor for future homicide, and a specific offence of non-fatal strangulation aims to improve the identification of such conduct, increase perpetrator accountability, and improve risk assessment and management for victims.

I look forward to hearing members' contributions to the debate of the Domestic and Family Violence Protection and Another Act Amendment Bill 2015. In conjunction with the other reforms being implemented by this government, this bill will make a significant difference to the lives of those experiencing the devastating effects of domestic and family violence. I commend the bill to the House.